

REMARKS

The Restriction Requirement dated March 21, 2003, has been carefully reviewed and the following comments are made in response. Applicants respectfully request reconsideration with respect to the unity of invention displayed by all of the pending claims, particularly in light of the amendments made above to claims 17 and 19-21 as well as the addition of new claim 23. None of the amendments introduce new matter and they all find support in the original claims.

The position taken in the requirement for an election is not consistent with the concepts of unity of invention as it is defined in PCT Rules 13.1 and 13.2. All of these claims are connected by the special technical feature of a gram positive bacterial strain that does not express a functional HtrA protease. New claim 23 emphasizes this fact with respect to the product claims. Claims 17 and 19-21 have been amended to depend from new claim 23. The fact that the products of claims 17 and 18 (Group II) are narrower in scope with respect to additional features of the common technical feature does not create a lack of unity amongst the claims.

With respect to method claims 19-22 (Groups III, IV and V) they have been amended to recite the common special technical feature of a gram positive bacteria that does not express a functional HtrA protease, by way of changing their dependency to that of new claim 23. The position taken in the Restriction Requirement is that unity of invention is lacking because the substrates might vary and the objectives of these method claims are different. PCT Rules 13.1 and 13.2 do not indicate that distinctions in other features of various claims or distinctions in ultimate objectives are appropriate criteria for finding that claims lack unity of invention. These rules do require linkage by way of a common special technical feature distinguishable from the

prior art in order for claims to possess unity of invention. With respect to the pending method claims, particularly as clarified by the amendments contained herein, the common special technical feature is the use of a gram positive bacteria that does not express a functional HtrA protease.

In view of the these remarks, Applicants respectfully request reconsideration and examination of all of the pending claims, including those that have been amended herein.

CONCLUSION

Except for issues payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Elizabeth C. Weimar
Elizabeth C. Weimar
Reg. No. 44,478

Dated: April 21, 2003
Customer No.: 009629
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
(202) 739-3000

Version with markings to show changes

17.(Amended) A Gram positive bacterial strain [that does not express a functional HtrA protease] according to claim 23 wherein the strain has a genome that is equal to or less than 3.2 Mb in size, with the proviso that the bacterial strain is not a *Lactobacillus helveticus* strain having a gusA reporter gene inserted into a gene encoding the HrtA protease, and wherein the bacterial strain comprises an expression cassette having a sequence encoding a protein of interest operably linked to a promoter.

19.(Amended) A method of producing a fermented product, comprising:
culturing a bacterial strain according to claim 23 [17] with a fermentation substrate under conditions suitable to produce a fermented product.

20.(Amended) A method of producing a dietetic food, comprising:
culturing a bacterial strain according to claim 23 [17] with a substrate under conditions suitable to produce a dietetic food.

21.(Amended) A method of producing a medicinal product, comprising:
culturing a bacterial strain according to claim 23 [17] with a suitable substrate under conditions effective to produce a medicinal product.

23.(New) A gram positive bacterial strain that does not express a functional HtrA protease.